

SENATE BILL 2246

By Norris

AN ACT to amend Tennessee Code Annotated, Title 8,
relative to state employees.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. This act shall be known and cited as the “Tennessee Excellence, Accountability, and Management (“T.E.A.M.”) Act of 2012”.

SECTION 2. Tennessee Code Annotated, Section 8-30-101, is amended by deleting the section in its entirety and by substituting instead the following:

(a) The purpose of this article is to establish in the state a system of personnel administration that will attract, select, retain and promote the best employees based on merit and equal opportunity, and free from coercive political influences. Because the citizens of the state deserve services from the best employees, the goal of the state personnel system is to provide technically competent employees to render impartial services to the public at all times and to render such services in an ethical and honorable manner. Specifically, the intent of the general assembly is to further this purpose by allowing agencies greater flexibility in personnel management in order to enhance the overall effectiveness and efficiency of state government. The general assembly further intends that state government operate within a framework of consistent best practices across all state agencies and entities and that the state’s most valued resource, its employees, be managed in a manner designed to enhance work force productivity and demonstrate sound business practices.

(b) It is the policy of the state that agencies treat all employees in accordance with the following principles:

(1) Assuring fair treatment of applicants and employees in all aspects of personnel administration without regard to race, color, national origin, sex, age, disability, religion or creed, or political affiliations. This “fair treatment” principle includes compliance with all state and federal equal employment opportunity and nondiscrimination laws;

(2) Recruiting, selecting, and promoting employees on the basis of their relative skills, abilities, competencies and knowledge, including an open process to consider qualified applicants for initial employment;

(3) Providing equitable and adequate compensation based on merit, performance, job value, and competitiveness within applicable labor markets;

(4) Training and developing employees, as needed, to assure a high level of performance and to provide work force knowledge and skills needed to maintain and advance the state's goals and objectives;

(5) Retaining employees on the basis of the adequacy of their performance, correcting inadequate performance when possible and appropriate, and separating employees whose performance and personal conduct is inadequate, unsuitable or inferior; and

(6) Assuring that employees are protected against coercion for partisan political purposes and are prohibited from using their official authority for the purpose of interfering with, or affecting the result of, an election or nomination for office.

(c) This chapter shall be liberally construed in order to increase governmental efficiency and responsiveness and to secure the employment of qualified persons in the state preferred service.

(d) The personnel administration system adopted under this chapter shall govern and limit all other state employment matters and every appointing authority.

SECTION 3. Tennessee Code Annotated, Section 8-30-102, is amended by deleting the section in its entirety and by substituting instead the following:

(a) Except as provided in section (b), this chapter applies to all personnel in state service. "State service" means all officers and positions of trust or employment in the service of state government in the executive branch and all boards, commissions and agencies of state government, except those specifically excluded in this chapter.

(b) This chapter does not apply to the following:

(1) The legislative branch of state government including, but not limited to, employees of the fiscal review committee, and employees of any other committee, office or other entity created pursuant to law or resolution of either house of the general assembly for the purpose of serving either or both houses of the general assembly in executing its duties under the Constitution of Tennessee;

(2) The judicial branch of state government including, but not limited to, employees of the administrative office of the courts;

(3) The office of the secretary of state;

(4) The office of the state treasurer;

(5) The office of the comptroller of the treasury;

(6) The office of the attorney general and reporter;

(7) The offices of the district attorneys general and the district public defenders;

(8) The schools, institutions and entities governed by the board of regents and the University of Tennessee board of trustees, including the

members of the teaching staffs and the staffs of the boards themselves; and only certified professional employees of the Tennessee School for the Blind, Tennessee School for the Deaf, West Tennessee School for the Deaf, Alvin C. York Institute, and any other special school hereafter established;

(9) Any administrative boards and commissions, or any other officers or employees, attached to the entities listed in subdivisions (b)(1)-(8) for administrative purposes;

(10) The Tennessee higher education commission and all employees of that commission; and

(11) All employees of the Tennessee advisory commission on intergovernmental relations.

(c) The commissioner shall, upon request of the heads of any of the excluded entities enumerated above, perform any of the functions set forth in this chapter. Such a request shall not be deemed to make the provisions of this chapter applicable to those entities.

SECTION 4. Tennessee Code Annotated, Section 8-30-103, is amended by deleting the section in its entirety and by substituting instead the following:

(a) As used in this chapter, unless the context otherwise requires:

(1) "Appointing authority" means a commissioner, department, officer or agency having power to make appointments to, and separations from, positions in state service;

(2) "Board of Appeals" refers to the state employees' appeals board established by Section 8-30-108 of this chapter.

(3) “Class” or “class of positions” means a group of positions in state service determined by the commissioner to have sufficiently similar duties, authority, and responsibility such that:

(A) The same qualifications may be reasonably required for; and

(B) The same schedule of pay may be equitably applied to; all positions in the group.

(4) “Commissioner” refers to the commissioner of human resources appointed under Section 8-30-104 of this chapter.

(5) “Department” refers to the department of human resources established by Section 8-30-104 of this chapter. The term includes the commissioner.

(6) “Executive service” means all other positions that have not been placed under the preferred service and as are described in Section 8-30-202.

(7) “List of Eligibles” means a list of persons who meet the minimum qualifications for appointment to a position as determined by the department.

(8) “Official Station” means the town or city where the employee performs a majority of his or her duties.

(9) “Preferred service” means all offices and positions of employment in the state service that have been placed under the preferred service provisions of this chapter.

(10) “State agency” means an authority, board, branch, commission, committee, department, division, or other instrumentality in state service that is subject to this chapter.

(11) “State service” shall have the same meaning assigned in Section 8-30-102.

SECTION 5. Tennessee Code Annotated, Section 8-30-104, is amended by deleting the section in its entirety and by substituting instead the following:

(a) The commissioner, as executive head of the department of human resources, shall direct and supervise all administrative and technical human resources activities of state service. In addition to other authority and responsibilities imposed upon the commissioner by law, the commissioner shall have the authority to:

(1) Survey the administrative organization and procedures, including personnel procedures, of all state agencies, and submit to the governor measures to do the following among state agencies:

(A) Secure greater efficiency and economy;

(B) Minimize the duplication of activities; and

(C) Effect better organization and procedures.

(2) Prescribe rules and regulations for the administration and execution of this chapter in accordance with the Uniform Administrative Procedures Act.

(3) Develop personnel policies, methods, procedures, and standards for all state agencies.

(4) Establish and maintain a roster of all employees in state service.

(5) Appoint such departmental employees, experts, and special assistants as may be necessary to carry out the provisions of this chapter.

(6) Establish, execute and administer a classification and compensation plan for all employees in state service.

(7) Approve or disapprove and record the appointments, transfers, demotions, promotions, suspensions, dismissals, layoffs, reclassifications, reappointments, resignations, sick, annual, compensatory and special leave, and hours of service of employees.

(8) Implement a job performance evaluation system for employees in state service.

(9) Make available education development specialists, who will administer training programs for employees in the state service, including compliance, professional skills, talent development and leadership development. The commissioner shall approve any out-service training for state employees.

(10) Require that appointing authorities notify the employee of the right to appeal his or her dismissal, demotion or suspension, if any such right exists, and the time in which the employee must exercise his or her right to appeal.

(11) Make available employee relations specialists to help employees:

(A) Resolve employment related problems; and

(B) Understand the procedures that are available for appeals.

(12) Evaluate the need for existing positions and approve new positions in state service and compensation for such positions.

(13) Check all payrolls and other compensation for personal services, and supply the information to the commissioner of finance and administration, before the same may be properly authorized for payment.

(14) Investigate personnel, salary rate and ranges, and employment conditions in state service as may be requested by the governor, and require the attendance of witnesses and production of documentary evidence pertinent to any such investigation.

(15) Process for payroll entry the personnel records of the state special schools; the state board of education shall have the exclusive authority to employ such personnel and determine their compensation; and

(16) Implement, administer, and enforce this chapter and rules and policies adopted under this chapter.

(17) Perform any other lawful acts that the commissioner considers necessary or desirable to carry out the provisions of this chapter.

(b) The commissioner and appointing authorities may appoint a designee as they deem necessary to act within the scope of this chapter.

SECTION 6. Tennessee Code Annotated, Section 8-30-105, is amended by deleting the section in its entirety and by substituting instead the following:

Rules adopted under the provisions of this part shall have the force and effect of law, and may include any provision relating to state employment, not inconsistent with the laws of this state, which may be necessary or appropriate to give effect to the provisions and purposes of this chapter.

SECTION 7. Tennessee Code Annotated, Section 8-30-106, is amended by deleting the section in its entirety and by substituting instead the following:

To carry out the purposes of this chapter, the department may do the following:

(1) Contract with persons outside the department as the commissioner deems necessary.

(2) Administer oaths.

(3) Issue subpoenas.

(4) Compel the production of records pertinent to any investigation or hearing authorized by this chapter.

(5) Maintain such action or proceeding at law or in equity as the commissioner considers necessary or appropriate to secure compliance with this chapter and the rules, regulations and orders issued hereunder.

SECTION 8. Tennessee Code Annotated, Section 8-30-107, is amended by deleting the section in its entirety and by substituting instead the following:

(a) All officers and employees of the state shall comply with the provisions of this chapter and the rules, regulations and orders established pursuant to this chapter, unless a specific exemption applies.

(b) A state officer or employee who fails to comply with any provision of this chapter or with any rule, regulation or order thereunder commits a Class C misdemeanor.

SECTION 9. Tennessee Code Annotated, Section 8-30-108, is amended by deleting the section in its entirety and substituting instead the following:

(a) There is created and established in the department of human resources a board of appeals of seven (7) members.

(b) The members of the board of appeals shall be citizens of the state. No member of the board shall be a member of any state or national committee of a political party or shall hold or be a candidate for any paid public office.

(c) The governor shall appoint, and may remove, the members of the board from the public at large. The terms of office shall be arranged so that no more than two (2) terms expire in the same year. Of the seven (7) members newly appointed, one (2) shall be appointed for a term of two (2) years, two (2) for a term of three (3) years, two (2) for a term of four (4) years and one (1) for a term of five (5) years. Thereafter, each member shall be appointed for a term ending six (6) years from the date of the expiration of term, for which the member's predecessor was appointed. A person appointed to fill a vacancy occurring prior to the expiration of such term shall, however, be appointed for only the remainder of the unexpired term.

(d) The commissioner shall establish the pay for the members of the board by rule. The members of the board shall be entitled to reimbursement for reasonable necessary travel expenses in accordance with the state comprehensive travel regulations promulgated by the department of finance and administration and approved by the attorney general and reporter.

(e) The board shall elect one (1) of its members as chair. The board shall meet at least once every three (3) months and at such other times as shall be specified by call of the chair, the commissioner of human resources, or the governor. Notice of each meeting shall be given in writing to each member by the commissioner, and such notice shall specify the place and the time of the meeting. Three (3) members shall constitute a quorum.

(g) In addition to the duties expressly imposed upon the board elsewhere in this chapter, the board shall:

(1) Represent the public interest in the improvement of personnel administration in state service; and

(2) Have jurisdiction to hear appeals brought pursuant to this chapter and regulations promulgated pursuant thereto. The board shall also be the final step in the appeals procedure provided for preferred service employees.

SECTION 10. Tennessee Code Annotated, Section 8-30-201, is amended by deleting the section in its entirety and by substituting instead the following:

State service is divided into the preferred service and executive service.

SECTION 11. Tennessee Code Annotated, Section 8-30-202, is amended by deleting the section in its entirety and by substituting instead the following:

(a) The following positions shall be executive service positions:

(1) Any officer or employee appointed by the governor and all positions in the governor's office;

(2) Any deputy commissioner or equivalent authority in each department or state agency;

(3) Any assistant commissioner or equivalent authority in each department or state agency;

(4) Wardens and directors of correctional facilities identified in Title 41 and chief officers of mental health institutes or developmental centers identified in Title 33.

(5) The head of a division or major unit within a state agency or a regional director or manager for a state agency, regardless of the title of the position, who, as a substantial part of the position's duties, provides meaningful input on:

(A) The development of policy goals; or

(B) The implementation of policy.

(6) The highest ranking employee of a state agency who has a primary responsibility for one (1) or more of the following functions:

(A) Public information;

(B) Fiscal, budget and audit matters;

(C) Security or internal affairs;

(D) Information technology systems; and

(E) Human resources.

(7) A clinical director, medical director, or other licensed physician.

(8) A licensed attorney engaged in the practice of law and representing the state in such capacity.

(9) Any position serving in a confidential capacity to a commissioner, deputy commissioner, assistant commissioner or equivalent authority.

(b) All other regular full-time positions in state service shall be in the preferred service.

(c) An employee becomes a member of the preferred service upon successful completion of the probationary period under the provisions of this chapter.

(d) Preferred service employees include any commissioned member of the department of safety, below the rank of captain, serving in the capacity of executive security, who has been so certified by the commissioner of safety to the commissioner of human resources.

(e) The commissioner shall determine equivalent levels for the purpose of assigning positions not specifically addressed in section (a) to the preferred or executive service. Such determination may be based on duties, responsibilities and reporting relationships and shall not be subject to review through any procedure. However, within any department, implementation of this provision shall not jeopardize federal funding resources.

SECTION 12. Tennessee Code Annotated, Section 8-30-203, is amended by deleting the section in its entirety and by substituting instead the following:

(a) The commissioner, after consulting with appointing authorities and other qualified authorities, shall determine, or cause to be determined, the authority, duties, and responsibilities of all positions in the state preferred service.

(b) The commissioner shall prepare a classification plan that groups all positions in the preferred service in classes, based on the authority, duties, and responsibilities of each position. The classification plan must set forth, for each class of positions, the class title and a statement of the authority, duties, and responsibilities of the class. Each

class of positions may be subdivided, and classes may be grouped and ranked in such manner as the commissioner considers appropriate.

(c) The commissioner shall periodically:

(1) Review the positions in the state preferred service; and

(2) Reallocate the positions to the proper classes based on the duties and responsibilities of the positions at the time of the review under subdivision (1).

(d) The commissioner shall also prepare a statement of minimum qualifications for each class of positions in the preferred service.

SECTION 13. Tennessee Code Annotated, Section 8-30-204, is amended by deleting the section in its entirety and by substituting instead the following:

Before establishing a new position in the preferred service or making a material change in the authority, duties, or responsibilities of a position in such service, an appointing authority shall receive approval from the commissioner in writing.

SECTION 14. Tennessee Code Annotated, Section 8-30-205, is amended by deleting the section in its entirety and by substituting instead the following:

The commissioner may, at any time, allocate any new position to a class, or change the allocation of any position to a class, or make changes in the classification plan. If any change is made in the classification plan by which a class of positions is divided, altered, or abolished, or the classes are combined, the commissioner shall reallocate the positions and/or the affected employee to the appropriate class.

SECTION 15. Tennessee Code Annotated, Section 8-30-206, is amended by deleting the section in its entirety and by substituting instead the following:

No person shall be appointed to or employed in a position in the preferred service under a classification title that has not been approved by the commissioner as

appropriate to the duties to be performed. Nothing in this section prohibits the use of working job titles assigned by the appointing authority.

SECTION 16. Tennessee Code Annotated, Section 8-30-207, is amended by deleting the section in its entirety and by substituting instead the following:

(a) The commissioner shall prepare and recommend to the governor a compensation plan for all employees. Such compensation plan may include, for each class of positions, a minimum and maximum rate, and such intermediate rates as the commissioner considers necessary or equitable. In establishing such rates, the commissioner shall consider the ability to effectively recruit for positions in state service, the prevailing rates of pay for the services performed and for comparable services in public and private employment, living costs, other benefits received by employees, and the state's financial condition and policies. The compensation plan shall take effect when approved by the governor. The commissioner may initiate and recommend amendments, from time to time, to the governor. Each employee shall be paid at one of the rates set forth in the compensation plan for the class of positions, in which he or she is employed. The commissioner may approve payment at a rate above that assigned to the employee's position in the compensation plan when he or she determines it to be in the interest of the state.

(b)

(1) Notwithstanding any provision to the contrary, the commissioner shall establish guidelines to govern the distribution of any funds which may be available for merit pay for members of the state service.

(A) The guidelines shall establish objectively measurable criteria, which ensure that the merit pay system:

(i) Rewards above-average performance;

- (ii) Improves efficiency;
- (iii) Encourages participation in programs that will improve job performance and skills; and
- (iv) Does not permit, facilitate or promote discrimination on account of race, color, gender, disability, religion, creed, veteran's status or national origin.

(B) Such guidelines shall also provide that merit pay funds are consistently distributed in a fair and equitable manner.

(c) Each employee whose job conduct and performance is satisfactory shall receive a periodic salary increase, if and when, authorized by the legislature; provided, that employees at or above the top step of their salary ranges shall not be eligible for such a salary increase. Periodic salary increases shall only be awarded to employees who have completed twelve (12) continuous months of state service as of July 1 of each year. Employees who have not completed twelve (12) continuous months of state service as of July 1 of each year shall be eligible for a periodic salary increase upon completion of twelve (12) continuous months of state service. Periodic salary increases shall be subject to availability of funds as provided in the general appropriations act for each fiscal year.

SECTION 17. Tennessee Code Annotated, Section 8-30-208, is amended by deleting the section in its entirety and by substituting instead the following:

The commissioner shall establish guidelines for the accumulation and use of state compensatory time not governed by the Fair Labor Standards Act. Employees who accumulate the maximum number of hours of state compensatory time or more shall be paid for each additional hour of overtime worked based on that employee's hourly wage.

Payment shall be made at the end of each pay period for eligible hours accumulated during the previous pay period.

SECTION 18. Tennessee Code Annotated, Section 8-30-209, is amended by the section in its entirety and by substituting instead the following:

No preferred service employee shall be assigned to perform the majority of the duties and responsibilities of a position in a higher level classification than that of the position occupied by the employee, without the approval of the appointing authority. When an employee is so assigned, the duration of such assignment may not exceed ninety (90) days without the approval of the commissioner. The commissioner, in consultation with the commissioner of finance and administration, shall establish a procedure under which an employee who is assigned to perform the majority of the duties and responsibilities of a higher level classification for a period in excess of ninety (90) days shall receive additional compensation for such assignment.

SECTION 19. Tennessee Code Annotated, Section 8-30-210, is amended by deleting the section in its entirety and by substituting instead the following:

(a) No employee may receive payment, unless the commissioner or the commissioner's agent has certified that the employee has been appointed and employed in accordance with the provisions of this chapter and the rules, regulations and orders issued thereunder.

(b) If the commissioner wrongfully withholds certification of the payroll voucher or account of any employee, the employee may maintain a proceeding in a court of record to compel the commissioner to certify such payroll voucher or account.

SECTION 20. Tennessee Code Annotated, Section 8-30-211, is amended by deleting the section in its entirety and by substituting instead the following:

Any sum paid contrary to any provision of this chapter or of any rule, regulation or order thereunder may be recovered, in an action brought by the commissioner, from any officer who made, approved or authorized such payment or who signed or countersigned a voucher, payroll, check or warrant for such payment, or from the sureties on the official bond of any such officer. All moneys recovered in any such action shall be paid into the state treasury.

SECTION 21. Tennessee Code Annotated, Section 8-30-212 to Section 8-30-224, shall be repealed.

SECTION 22. Tennessee Code Annotated, Section 8-30-301, is amended by deleting the section in its entirety and substituting instead the following:

(a) The commissioner shall inform prospective applicants for state employment of the process for obtaining state employment.

(b) The commissioner shall give public notice of a job opening at least one week prior to the closing of the application period.

(c) The commissioner shall include the duties of, and pay for, the position or the class, the qualifications required thereof, and any other information that the commissioner considers pertinent and useful. The notice shall also state the requisite assessment method.

(d) All assessments administered by the department, the total bank of questions from which such assessments were developed and the answers thereto shall be confidential for as long as the commissioner deems necessary to protect the integrity of the assessment.

SECTION 23. Tennessee Code Annotated, Section 8-30-302, is amended by deleting the section in its entirety and substituting instead the following:

(a) If an executive service position is reassigned to the preferred service, the incumbent employee may, within one (1) year, be given a noncompetitive assessment in a manner prescribed by the commissioner.

(b)

(1) The commissioner shall certify whether each employee has met the minimum qualifications to retain the position. Upon certification, the employee shall be classified as a preferred service employee.

(2) An employee who is not certified shall be dismissed from the position as soon as is practicable, but no later than sixty (60) days after certification, unless the appointing authority notifies the commissioner that the employee has rendered satisfactory service and should be retained.

SECTION 24. Tennessee Code Annotated, Section 8-30-303, is amended by deleting the section in its entirety and substituting instead the following:

(a) The commissioner shall, from time to time, conduct the assessments that the commissioner considers necessary for the purpose of establishing lists of eligibles. The assessments shall be competitive and shall be designed to determine the qualifications, fitness and ability of the applicant to perform the duties of the class of positions for which a list is to be established. The assessment may consist of a written, oral, or physical exam, or a demonstration of skills, or any combination of such types. The assessment may also consist of an evaluation of education, experience, skill, ability, competency, knowledge, aptitude, capacity, character, and other qualifications as, in the judgment of the commissioner, may determine and measure the relative ability of the applicant. No part of an assessment shall be framed to elicit information concerning the race, gender, religion, disability, national origin, or political opinions or affiliations of an applicant.

(b) The commissioner may substitute a working test period in lieu of a written assessment for an applicant with a disability, who has been certified as unable to perform such a test by the department. The working test period shall not exceed one (1) year.

(c) The commissioner shall notify each applicant in writing of the results of the assessment as soon as reasonably practicable.

(d) A manifest error in the assessment result shall be corrected, if called to the attention of the commissioner within one (1) month after the establishment of the list of eligibles. The correction, however, shall not invalidate any appointment previously made from such list.

SECTION 25. Tennessee Code Annotated, Section 8-30-304, is amended by deleting the section in its entirety and substituting instead the following:

(a) The commissioner may reject the application of any person for admission to an assessment or may strike the name of a person from a list, if the department determines that the applicant:

(1) Lacks any of the required qualifications;

(2) Is incapable of performing the essential functions of the position that the applicant is seeking;

(3) Has been convicted of a crime rendering the applicant unsuitable for a particular position;

(4) Has been dismissed for cause from state service;

(5) Has made a false statement of a material fact; or

(6) Committed or attempted to commit a fraud or deception in connection with submitting an application or attempting to secure an appointment to state service.

(b) Any person whose name is removed from a list of eligibles for any reason shall be notified.

SECTION 26. Tennessee Code Annotated, Section 8-30-305, is amended by deleting the section in its entirety and substituting instead the following:

(a) The commissioner shall establish and maintain a list of eligibles for the various classes of positions as the commissioner deems necessary or desirable to meet the needs of the service.

(b) At the time a list of eligibles is established, the commissioner shall determine the period during which such list shall remain in force.

SECTION 27. Tennessee Code Annotated, Section 8-30-306, is amended by deleting the section in its entirety and substituting instead the following:

(a)

(1) Whenever an appointing authority proposes to fill a position in the preferred service, the authority shall submit to the commissioner a statement showing the position to be filled, the duties thereof, the official station, the minimum qualifications and preferred skill, abilities, competencies and knowledge of the person to be appointed.

(2) The commissioner shall refer a list of eligibles who meet the minimum qualifications for the position.

(3) An appointing authority must offer an invitation to interview to a minimum of three (3) applicants from the referred list of eligibles, if three (3) or more applicants are on the list. If less than three (3) applicants are on the list of eligibles, the appointing authority must invite each person on the list to interview.

(4) Within thirty (30) days after being referred a list of eligibles, the appointing authority shall appoint, one (1) of the applicants on the list of eligibles.

(b) Upon the request of the appointing authority, the commissioner may establish employment, promotional, unit, divisional or any other list of eligibles as deemed necessary or appropriate.

(c) If the official station of the vacancy to be filled is permanently located outside the geographic boundaries of the state of Tennessee, then the appointing authority may fill the vacancy without complying with subsections (a) and (b).

(d) In applying the provisions of this chapter, no person shall give any weight to political opinions or affiliation. No person holding a position in the preferred service shall directly or indirectly solicit donations or contributions for any political party, candidate, cause or purpose. A state officer or employee who violates the provisions of this section commits a Class C misdemeanor.

SECTION 28. Tennessee Code Annotated, Section 8-30-307, is amended by deleting the section in its entirety and substituting instead the following:

(a) When invitations to interview external candidates are conducted, and the list of eligibles includes any person who has been honorably discharged from the army, navy, air force, marine corps or coast guard or any member of the reserve components, as defined in 10 U.S.C. § 10101, who performs active federal service in the armed forces of the United States, these persons must be invited to interview.

(b) Any appointing authority who passes over an eligible veteran and selects an eligible nonveteran shall file with the commissioner the reasons for so doing, which reasons will become a part of the veteran's record, but will not be made available to anyone other than the veteran, except in the discretion of the appointing authority.

SECTION 29. Tennessee Code Annotated, Section 8-30-308, is amended by deleting the section in its entirety and substituting instead the following:

(a) Every person appointed to a position in the preferred service shall be subject to a probationary period of employment. The probationary period shall commence immediately upon appointment and shall continue for such time, not less than one (1) year, as shall be established by the commissioner. At any time during the employee's probationary period the appointing authority may remove the employee if, in the opinion of the appointing authority, the employee's performance or conduct during the probationary period indicates that such employee is unable or unwilling to satisfactorily perform or is not satisfactorily performing his or her duties, or that the employee's habits, dependability, or conduct do not merit continuance in the service.

(b) During the last month of an employee's probationary period, the appointing authority shall notify the commissioner in writing whether the performance and conduct of the employee have been satisfactory and whether continued employment is recommended.

SECTION 30. Tennessee Code Annotated, Section 8-30-309, is amended by deleting the section in its entirety and substituting instead the following:

(a) When an appointing authority desires to fill a position in the preferred service, and the commissioner cannot timely evaluate the list of eligibles for such vacancy, the commissioner may authorize the appointing authority to fill the position by temporary appointment for a period not to exceed six (6) months. A temporary appointee shall hold a position only until an appropriate list has been established and the required evaluation is completed. No temporary appointment shall be renewed.

(b) An appointing authority may, with the approval of the commissioner, temporarily fill an existing preferred service position, for a period not to exceed ninety (90) days, by utilizing a temporary staffing service having a contract with the state to

provide short-term temporaries. The provisions of this subsection (b) apply only to the utilization of vendor-supplied temporaries.

(c) If the position to be filled is not officially vacant, the appointing authority must obtain the commissioner's approval to overlap the position with another prior to making an appointment.

SECTION 31. Tennessee Code Annotated, Section 8-30-310, is amended by deleting the section in its entirety and substituting instead the following:

When an emergency occurs, affecting the ability to fill a position in the preferred service under any other provision of this part, an appointing authority, in order to prevent stoppage of public business or loss or serious inconvenience to the public, may appoint any qualified person to such position with the approval of the commissioner. Any such person shall be employed only during such emergency and for a period not exceeding one hundred twenty (120) days. No such appointment shall be renewed.

SECTION 32. Tennessee Code Annotated, Section 8-30-311, is amended by deleting the section in its entirety and substituting instead the following:

For positions involving basic clerical, unskilled or semiskilled labor, or domestic, attendant or custodial work, when the character or place of the work makes it impracticable to supply the needs of the service by appointments made in accordance with the procedure prescribed by this part, the commissioner may adopt, or authorize the use of, such other procedures as the commissioner determines to be appropriate in order to meet the needs of the service.

SECTION 33. Tennessee Code Annotated, Section 8-30-312, is amended by deleting the section in its entirety and substituting instead the following:

(a) An appointing authority may at any time assign an employee from one position to another position in the same job classification or rank within the same

department. Upon making such assignment, the appointing authority shall give written notice of such action and the reasons for such action to the commissioner.

(b) A transfer of an employee from one department to another may be made with the approval of the commissioner and of the appointing authorities. The appointing authority, or authorities, with the approval of the commissioner, shall have authority to make such a transfer for any reason that they may deem to be for the good of the service. Their actions shall not be subject to appeal except as provided in this chapter.

(c) No employee shall be transferred from a position in one class to a position in another class of a higher rank or for which there are substantially dissimilar requirements for appointment, unless the employee is appointed to such latter position after certification of the employee's name from a list of eligibles in accordance with the provisions of this chapter.

(d) Any change of an employee from a position in one class to a position in a class of a lower rank shall be considered a demotion, except that the employee shall not be considered to have been demoted and shall not be required to serve a period of probation, if the change from a position in one class to a position in a class of a lower rank occurred:

- (1) At the employee's request, with the concurrence of the department or agency; or
- (2) Because of a change in the organizational structure of the government entity;
- (3) Because of the abolishment of a position;
- (4) As the result of a reduction in force;
- (5) For reasons caused by organizational necessity; or
- (6) As a result of compliance with Section 8-30-205.

SECTION 34. Tennessee Code Annotated, Section 8-30-313, is amended by deleting the section in its entirety and substituting instead the following:

(a) In cooperation with appointing authorities, the commissioner shall establish, and may periodically amend:

(1) The standards of performance for employees;

(2) The expected outcomes for employees; and

(3) A system of job performance evaluations based upon the standards described in subdivisions (1) and (2).

(b) Employee performance standards and expected outcomes must be specific, measurable, achievable, relevant to the strategic objective of the employee's state agency or division, and time sensitive.

(c) Each appointing authority shall, at periodic intervals (but at least annually), make, and report to the commissioner, job performance evaluations for the employees in the appointing authority's department or state agency. Upon request by the commissioner, the appointing authority shall provide the information on which the appointing authority relied in evaluating job performance.

(d) The performance evaluations of state service employees shall not be considered public records under Section 10-7-503. Nothing in this subsection shall be construed to limit access to these records by law enforcement agencies, courts, or other governmental agencies performing official functions.

(e) Job performance evaluations may be used as follows:

(1) To determine salary increases and decreases within the limits established by the compensation plan developed under the provisions of this chapter;

(2) As a factor in making or denying promotions; and

(3) As a means of determining employees:

(A) Who are candidates for promotion or transfer; or

(B) Who, because of a low job performance evaluation, are candidates for demotion, dismissal or reduction in force.

SECTION 35. Tennessee Code Annotated, Section 8-30-314, is amended by deleting the section in its entirety and substituting instead the following:

(a) An appointing authority has the authority to layoff or furlough employees or reduce hours of employment for any of the following reasons:

(1) Lack of funds;

(2) A reduction in spending authorization;

(3) Lack of work;

(4) Efficiency; or

(5) Other material change in duties or organization.

(b) The appointing authority has the authority to determine the extent, effective dates, and length of a layoff, furlough, or reduction in hours taken under subsection (a).

(c) The appointing authority shall determine the classifications affected and the number of employees laid off in each classification and each county to which a layoff applies.

(d) The commissioner shall approve all reductions in force and no such layoff, furlough, or reduction in hours may begin until such approval has been granted.

(e) In determining a layoff, the appointing authority must consider all employees under the same appointing authority, within the classification affected, and within the county affected, and consider job performance evaluations first. Thereafter, consideration may be given to the following relevant factors:

(1) Disciplinary record.

(2) Skills, abilities, competencies and knowledge.

(3) Seniority.

(f)

(1) Any preferred service employee whose position is abolished because of a reduction-in-force shall be provided written notice containing the reason for the layoff at least thirty (30) days in advance of the effective date for abolishing the position.

(2) Subject to certification by the commissioner of finance and administration that the rainy day fund, also known as the revenue fluctuation reserve fund, is likely to fall below two hundred million dollars (\$200,000,000), any notice required by this section may be reduced to a different period of time, but not less than ten (10) days.

(3) Nothing in this section shall place the state in a position of liability for the portion of any employee's salary attributed to a governmental grant in cases when the state had less than one hundred twenty (120) days' notice of the funding reduction. Nor shall the requirement for notice prohibit any agency from closing the fiscal year with a balanced budget. In such cases, employees shall be provided the maximum notice possible.

(g) A position in the preferred service shall not be considered to have been abolished as provided in section (a) if the same or essentially similar duties, as determined by the commissioner, are incorporated in a new position in the same agency within one (1) year of the date after the effective date of the layoff that resulted in the position abolishment. Any preferred service employee so affected by abolishing the position shall be offered the newly established position without further competition.

(h) Notwithstanding any other law to the contrary, including, but not limited to, Section 4-4-105, the reduction of scheduled hours of work authorized by this section shall include the closing of any or all state departments on any day or partial day of the week, when determined to be necessary by the governor as a result of reductions in funding levels.

(i) If at any time prior to or during any reduction-in-force the governor determines that the reduction-in-force will materially impair and/or disrupt governmental services to the public, the governor shall notify the speaker of the senate and the speaker of the house of representatives of the anticipated impairment and/or disruption of such governmental services. The governor shall advise the speakers of the actions that the governor and the affected department or departments will undertake to minimize the impairment and/or disruption of such governmental services.

(j) An employee who is laid off as a result of a reduction in force shall be invited to interview when an agency offers invitations to interview applicants for the same job classification that the employee served immediately prior to the layoff. In order to be eligible to interview under this subsection (j), the employee must respond to the public notice of the job opening and the employee must not have been laid off more than one (1) year prior to the posting of the public notice of the job opening.

SECTION 36. Tennessee Code Annotated, Section 8-30-315, is amended by deleting the section in its entirety and substituting instead the following:

An appointing authority may suspend without pay a regular employee, for disciplinary purposes, for such length of time as the authority considers appropriate, not exceeding thirty (30) days in any twelve-month period. With the approval of the commissioner, an employee may be suspended for a longer period pending the appeal or the processing of an appeal in accordance with this chapter.

SECTION 37. Tennessee Code Annotated, Section 8-30-316, is amended by deleting the section in its entirety and substituting instead the following:

(a) An employee in the executive service is an employee at will and serves at the pleasure of the employee's appointing authority.

(b) An employee in the executive service may be dismissed, demoted, disciplined, or transferred for any reason that does not contravene public policy.

SECTION 38. Tennessee Code Annotated, Section 8-30-317, is amended by deleting the section in its entirety and substituting instead the following:

(a) An employee in the preferred service who has successfully completed a probationary period becomes a preferred service employee and may be dismissed, demoted, or suspended for cause. The dismissal of a preferred service employee will take effect immediately after the appointing authority gives notice to such employee and files a written statement with the commissioner. The employee shall continue to receive compensation for ten (10) days following the date of dismissal.

(b) An appointing authority may dismiss any employee when the authority determines that the good of the service will be served thereby. Whenever an employee is dismissed "for the good of the service," the notice of termination must outline the reasons for dismissal.

(c) If an employee in state service willfully refuses or fails to appear before any legislative committee, or any officer, board or body authorized to conduct any hearing or inquiry, the employee shall forfeit his or her position and shall not be eligible for appointment to any position in state service.

(d) Any employee who is absent from duty for more than three (3) consecutive work days without giving prior written or electronic notice to the appointing authority or appropriate manager that specifies the reason for such absence, and without securing

permission to be on leave, or who fails to report for duty or to the immediate supervisor or the appointing authority within two (2) work days after the expiration of any authorized leave of absence, is considered as having resigned not in good standing, absent extenuating circumstances beyond the control of the employee causing the employee's absence or preventing the employee's return. An employee deemed to have resigned in accordance with these circumstances shall have the right to appeal such action through the appeal procedure described herein.

(e) The commissioner may dismiss an employee if the commissioner finds that the employee was appointed as a result of fraud.

(f) A preferred service employee is entitled to appeal a dismissal, demotion, or suspension as provided herein.

SECTION 39. Tennessee Code Annotated, Section 8-30-318, is amended by deleting the section in its entirety and substituting instead the following:

(a) The department shall promulgate regulations establishing an appeal procedure for employees.

(b) An employee in the preferred service system, who has successfully completed the required probationary period, may file a complaint concerning the application of a law, rule, or policy to the employee. An executive service employee, however, does not have standing to file a complaint under this section.

(c) A complaint filed under this section must identify the law, rule, or policy that was allegedly violated.

(d) An employee who files a complaint under this section must file the complaint as soon as possible after the occurrence of the act or condition complained of, and not later than fourteen (14) days after the date the employee became aware, or by the exercise of reasonable diligence should have been aware, of the occurrence giving rise

to the complaint. If an employee fails to file the complaint within the fourteen-day period, the right to appeal under this chapter lapses and is deemed to have been waived in its entirety by the employee.

(e) For the purposes of this chapter, a complaint is filed when the appointing authority, the commissioner, or the Board of Appeals, depending on whether the complaint is being made under Step I, II or III as provided in subsection (g), receives a written or electronic copy of the complaint.

(f) A remedy granted under this section may not extend back more than thirty (30) days before the complaint was filed.

(g) The following complaint procedure is established:

Step I: The complainant shall reduce the complaint to writing and present the complaint to the complainant's appointing authority. The appropriate appointing authority or designee shall conduct any investigation considered necessary and issue a decision, in writing, not later than fifteen (15) days after the date the appointing authority receives the complaint.

Step II: If the appointing authority does not find in favor of the complainant, the employee may file the complaint with the commissioner of the Department of Human Resources not later than fourteen (14) days after the date of the appointing authority's finding. The commissioner of the Department of Human Resources shall review the complaint and the appointing authority's decision, and issue a judgment, in writing, not later than thirty (30) days after the date the appeal was filed with the commissioner.

Step III: The employee or state agency may file an appeal in writing to the Board of Appeals not later than fourteen (14) days after the date the employee, or in the case of a state agency, the state agency receives written notice of the

action taken by the commissioner of the Department of Human Resources. The Board of Appeals shall determine whether all previous procedural requirements were completed properly and in a timely manner. If a procedural requirement has not been met, the Board of Appeals shall dismiss the appeal. If the procedural requirements have been met, the Board of Appeals shall conduct proceedings, in accordance with the Uniform Administrative Procedures Act, to determine if the law, rule, or policy specified in the complaint was violated. The Board of Appeals shall issue a judgment, in writing, not later than thirty (30) days after the date the appeal was filed with the Board of Appeals.

(h) Decisions of the board of appeals are subject to judicial review in accordance with the Uniform Administrative Procedures Act.

(i) The commissioner may, in his or her discretion, award reasonable attorney's fees and costs to a successfully appealing employee, which shall be paid by the unsuccessful department or other state agency.

(j) If the employee is successful in obtaining reinstatement to a position from which the complainant has been terminated, the employee shall be reinstated to a position in the county in which he or she was employed at the time of termination. The commissioner may grant exceptions on a case-by-case basis.

(k) In any case in which a successful complainant has been awarded reinstatement, back pay or attorney's fees, the agency involved shall have a period of thirty (30) days from the date of the final order within which to provide reinstatement, back pay and/or attorney's fees.

SECTION 40. Tennessee Code Annotated, Section 8-30-319, is amended by deleting the section in its entirety and substituting instead the following:

(a) The supervisor is responsible for maintaining the proper job performance level, conduct, and discipline of the employees under the supervisor's supervision. When corrective action is necessary, the supervisor should administer disciplinary action at the step appropriate to the infraction, conduct, or performance, as determined by the supervisor.

(b) Upon written application by the employee, any written warning or written follow-up to an oral warning, which has been issued to an employee, shall be expunged from the employee's personnel file after a period of two (2) years; provided, that the employee has had no further disciplinary actions with respect to the same area of performance, conduct, and discipline.

SECTION 41. Tennessee Code Annotated, Section 8-30-320, is amended by deleting the section in its entirety and substituting instead the following:

(a) The department shall establish and administer the Tennessee Employee Mediation Program.

(b) An employee or supervisor may request mediation services through the Tennessee Mediation Program in order to resolve workplace issues as identified by rules of the department. Participation in the mediation sessions shall be voluntary and conducted upon agreement by both parties. Each employee shall be entitled to obtain mediation services without interference, coercion or reprisal.

(c) Participation in mediation sessions shall not require the use of accrued leave, if the employee has obtained prior approval of the supervisor or appointing authority.

(d) Participation in mediation does not preclude an agency from taking disciplinary action as needed in dealing with job performance or conduct.

(e) Participation in mediation shall not affect the time periods for filing an appeal as described in this chapter.

SECTION 42. Tennessee Code Annotated, Sections 8-30-321 to Section 8-30-333, shall be repealed.

SECTION 43. Tennessee Code Annotated, Section 8-30-401, is amended by deleting the section in its entirety and substituting instead the following:

The commissioner may enter into agreements with any municipality or political subdivision of the state to furnish services and facilities of the department to such municipality or political subdivision in the administration of its personnel. Any such agreement shall provide for the reimbursement to the state of the reasonable cost of the services and facilities furnished, as determined by the commissioner. All municipalities and political subdivisions of the state are authorized to enter into such agreements.

SECTION 44. Tennessee Code Annotated, Section 8-30-402, is amended by deleting the section in its entirety and substituting instead the following:

All officers and employees of the state and of municipalities and political subdivisions of the state shall allow the department the reasonable use of public buildings under their control for conducting an assessment, hearing or investigation authorized by this part or part 3 of this chapter. The department shall pay to a municipality or political subdivision the reasonable cost of any such facilities furnished by it.

SECTION 45. Tennessee Code Annotated, Section 8-30-403, is amended by deleting the section in its entirety and substituting instead the following:

(a) No person shall make any false statement, certificate, mark, rating or report with regard to any assessment, certification or appointment made under any provision of this chapter, or in any manner commit or attempt to commit any fraud preventing the impartial execution of this chapter.

(b) No person shall, directly or indirectly, give, render, pay, offer, solicit or accept any money, service or other valuable consideration for or on account of any appointment, proposed appointment, promotion or proposed promotion to, or any advantage in, a position in the state service.

(c) No employee of the department, examiner, or other person shall defeat, deceive or obstruct any person in such person's right to an assessment, eligibility, certification or appointment under this chapter, or furnish to any person any special or secret information, for the purpose of affecting the rights or prospects of any person with respect to employment in the preferred service.

SECTION 46. Tennessee Code Annotated is amended by adding the following as a new section, to be designated as Section 8-30-404:

Nothing in this chapter shall be construed to prevent the commissioner, in his or her discretion, from permitting any department in state service from complying with any condition or limitation included in, or affecting any grant from, the federal government or other public or private source.

SECTION 47. Tennessee Code Annotated is amended by adding the following as a new section, to be designated as Section 8-30-405:

Nothing in this chapter shall be construed to prohibit a state employee from engaging in outside employment. Such outside employment shall not adversely affect the employee's performance with the state, create a conflict of interest between such additional employment, or conflict with the regular employment schedule of the employee.

SECTION 48. Tennessee Code Annotated is amended by adding the following as a new section, to be designated as Section 8-30-406:

The rules shall provide for the hours of work, holidays, attendance regulations and leaves of absence in state service. They may contain provisions for annual, sick, and special leaves of absence, with or without pay.

SECTION 49. Tennessee Code Annotated is amended by adding the following as a new section, to be designated as Section 8-30-407:

In computing any period of time prescribed or allowed by this chapter, the date of the act or event after which the designated period of time begins to run is not to be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday as defined in Section 15-1-101, or, when the act to be done is the filing of a paper, a day on which the office where the paper to be filed is closed or on which weather or other conditions have made the office inaccessible, in which event the period runs until the end of the next day which is not one of the aforementioned days. When the period of time prescribed or allowed is less than eleven (11) days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.

SECTION 50. The Tennessee Code Commission is requested to change appropriate references from "civil service" to "state service" and from "career service" to "preferred service" in the code as supplements are issued and volumes are replaced.

SECTION 51. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 52. This act shall take effect on July 1, 2012, the public welfare requiring it.